SUPREME COURT, U. S.

SEP 15 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 592

JOHN R. FLOYD,

Petitioner,

vs.

CITY OF ROCKFORD, ILLINOIS,
a Municipal Corporation,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

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---

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, John R. Floyd, prays that a writ of certiorari issue to review a judgment of the Appellate Court of Illinois, Second Judicial District, entered on December 30, 1968, reversing the judgment of the trial court dismissing the charge for violation of the City ordinance for driving while under the influence of intoxicating liquor.

Citation to Opinion Below.

The opinion of the Appellate Court printed in Appendix D hereto, infra, page 7a, is reported in 104 Ill. App. 2d 161, 243 N.E. 2d 837.

Jurisdiction.

The judgment of the Appellate Court was entered on December 30, 1968. (R. 3.) A timely petition for rehearing was filed on January 20, 1969. (R. 13.) It was denied on February 7, 1969. (R. 14.) A timely petition for appeal as a matter of right or in the alternative for leave to appeal to the Supreme Court of Illinois was filed on March 14, 1969. It was denied on May 26, 1969. (R. 15.) A timely motion for reconsideration of the order denying the petition for appeal as a matter of right or in the alternative for leave to appeal was filed on June 11, 1969. It was denied on June 17, 1969. (R. 16.) Thereupon a mandate was issued. The issuance of the mandate of the Appellate Court was stayed on June 24, 1969, to September 22, 1969.

The jurisdiction of this court is invoked under 28 U.S.C., Section 1257 (3).

The federal questions sought to be reviewed were raised in the trial court (e. g. motion to dismiss complaints A. 2) and also in the reviewing courts (e. g. petition for rehearing R. 13, and petition for leave to appeal).

Questions Presented.

1. Whether the City ordinance relating to driving while intoxicated is unconstitutional because it is vague, indefinite and uncertain, and is in conflict with the State statute.

2. Whether the State statute relating to driving while intoxicated "preempts the field" to the exclusion of the municipality.

3. Whether the application of the municipal ordinance relating to driving while under the influence of intoxicating liquor to petitioner violates the Equal Protection Clause of the 14th Amendment to the Constitution of the United States, and also Section 2 of Article II of the Constitution of the State of Illinois.

Constitutions, Statutes and Ordinance Involved.

The 14th Amendment to the Constitution of the United States and Section 2 of Article II of the Constitution of the State of Illinois are printed in Appendix A hereto, infra, page 1a.

Section 11-80-1 of the Illinois Municipal Code, and Sections 25, 26 and 47 of the Uniform Act Regulating Traffic on Highways are printed in Appendix B hereto, infra, page 1a.

Section 39-101 of the Code of Ordinances of the City of Rockford, Illinois, is printed in Appendix C hereto, infra, page 6a.

Statement of the Case.

This is an action for the violation of two municipal ordinances.

Petitioner was issued an Illinois Uniform Traffic Ticket and Complaint by certain Rockford police on November 12, 1966, which charged him with the offense of driving while intoxicated in violation of Section 39-101 of the local ordinance.

He was also issued an Illinois Uniform Traffic Ticket and Complaint on the same day which charged him with the offense of careless driving in violation of Section 39-99 of the local ordinance.

Complaints made by the complainant, John A. Hall, were filed against him on December 9, 1966. The charges were in the language of the respective ordinances.

The constitutionality of the municipal ordinances upon which the complaints were based, among other things, was raised in a motion to dismiss the complaints filed on April 1, 1966. The motion was heard and granted.

A motion by the plaintiff for the reinstatement of the case was filed. The motion was heard and denied on April 8, 1968.

A notice of appeal was filed on April 16, 1968.

From the judgment dismissing the complaints, the plaintiff appealed to the Appellate Court of Illinois, Second Judicial District.

The court reversed and remanded the judgment of the trial court dismissing the charge for driving while under the influence of intoxicating liquor, but affirmed the dismissal of the charge of careless driving on December 30, 1968.

A petition for rehearing was denied on February 7, 1969.

Application for appeal as a matter of right or in the alternative for leave to appeal was then made to the Supreme Court of Illinois.

Reasons for Granting the Writ.

1. The City ordinance relating to driving under the influence of intoxicating liquor is unconstitutional because it is vague, indefinite and uncertain and is in conflict with the State statute.

In its opinion, the Appellate Court considered whether or not there was a conflict between the State statute and the City ordinance relating to driving under the influence of intoxicating liquor, and held that inasmuch as the City ordinance was less restrictive in its penalty that no conflict was present.

If one compares the City ordinance with the State statute one can readily see that the ordinance and the statute are in conflict.

The State statute contains a definition of what constitutes driving under the influence of intoxicating liquor in regard to the percentage of blood alcohol. (Ill. Rev. Stat. 1965, Chap. 95½, Sec. 144.) The City ordinance does not contain this definition, and the municipality is thus free to determine what constitutes driving under the influence of intoxicating liquor without regard to the limitation contained in Section 144.

If a chemical analysis of a person's breath, blood, urine, saliva, or other bodily substance is made, and the result of the analysis is admitted in evidence, what presumptions will the municipality use and follow in instructing the court or jury on the issue of what percentage of blood alcohol constitutes driving under the influence of intoxicating liquor? The fact that this important feature of the State statute has been omitted

from the City ordinance creates a vagueness, indefiniteness and uncertainty. To say that the penalty of the City ordinance is less than the penalty of the State statute does not answer the ambiguities and conflicts presented. The State statute and the City ordinance are in conflict because of this vagueness, indefiniteness and uncertainty, and therefore the City ordinance is unconstitutional.

2. The State statute relating to driving under the influence of intoxicating liquor "preempts the field". A municipality has no power or authority to enact or enforce an ordinance relating to the same offense.

The Illinois Municipal Code (Ill. Rev. Stat. 1965, Chap. 24) which was adopted in 1961 contains a division relating to the general powers of a municipality over streets and public ways. The first section of the division (Ill. Rev. Stat. 1965, Chap. 24, Sec. 11-80-1) states that the provisions relating to the control of streets, alleys, and sidewalks and all other public ways are subject to the provisions of the Uniform Act Regulating Traffic on Highways. (Ill. Rev. Stat. 1965, Chap. 95½, Sec. 98 et seq.) Another section of the same division which allows the corporate authorities of each municipality to regulate traffic is therefore subject to the Uniform Act Regulating Traffic on Highways. (Ill. Rev. Stat. 1965, Chap. 24, Sec. 11-80-20.)

Section 25 of the Uniform Act Regulating Traffic on Highways provides that the provisions of the Act shall be applicable and uniform throughout the State and in all municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of the Act unless expressly authorized therein. Section 26 of the Act allows the local

authorities with respect to streets and highways under their jurisdiction to regulate certain enumerated aspects of traffic. In no respect are the municipalities allowed to regulate driving under the influence of intoxicating liquor. It appears that the intent of the legislature was to allow municipalities to regulate streets by virtue of the police power in regard to such things as speed of vehicles in public parks, U-turns, parking, and one way highways, but such regulations were not to be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate. Clearly, the legislature did not intend for cities or villages to regulate driving under the influence of intoxicating liquor by local ordinance, or such power would have been stated. Certainly, the legislature intended to "preempt the field" when it adopted Section 47 of the Act relating to driving under the influence of intoxicating liquor or narcotic drugs. This section is comprehensive concerning what constitutes driving under the influence of intoxicating liquor and provides various tests, examinations and evidentiary rulings, together with the penalty for violation of the Act. In fact, the 1965 test as to what constitutes a presumption of driving under the influence of intoxicating liquor has been changed by the legislature. (Ill. Rev. Stat. 1967, Chap. 95½, Sec. 144.) The section also provides that the Secretary of State shall revoke the chauffeur's or operator's license of any person convicted under the section.

In its opinion, the Appellate Court states that the words "in conflict" in Section 122 (also cited as Section 25) must be given meaning, and therefore the logical conclusion is that municipalities are empowered to pass

laws or ordinances as long as they are not in conflict with the State law, and therefore the State has not "pre-empted the field."

It would seem that the same logical conclusion could be reached that "in conflict" means that any municipal ordinance which purports to treat an area already covered by a State statute is automatically in conflict with the statute and cannot be enforced. This argument is enhanced by the fact that Section 123 provides that municipal authorities can enact ordinances in certain enumerated areas, but certain of these areas have effective regulation only when signs giving notice of such local traffic regulations are posted.

Lower courts have seen the inequities which ordinances purporting to govern conduct already prohibited by State statute provide for the citizen. See *Village of Mount Prospect* v. *Malouf*, 103 Ill. App. 2d 88, 243 N.E. 2d 434. Such inequities should be controverted by this court by a decision which decides that the State statute "pre-empts the field".

3. The application of the City ordinance relating to driving under the influence of intoxicating liquor to the petitioner violates the Equal Protection Clause of the 14th Amendment to the Constitution of the United States and also Section 2 of Article II of the Constitution of the State of Illinois.

In its opinion, the Appellate Court held that the State statute relating to driving under the influence of intoxicating liquor had not "preempted the field" and that a municipal ordinance which creates an offense in substantially the same language is not in conflict with the State statute and can be enforced by the municipality. When

a person is arrested within a municipality in the State of Illinois and is charged with the violation of a municipal ordinance rather than the State statute relating to driving under the influence of intoxicating liquor, the individual is denied the equal protection of the laws under the Constitution of the United States and the due process clause of the Constitution of the State of Illinois.

One can easily ascertain that a person arrested within the city limits and prosecuted for violation of the City ordinance as contrasted with a person arrested within the city limits and prosecuted by State statute or a person arrested outside the city limits, has different rights according to the manner in which the City ordinance and the State statute are administered. A person prosecuted by municipal ordinance is subject to a finding of guilty by the court or a jury upon hearing evidence by a clear preponderance of the evidence. (*City of Highland Park* v. *Curtis*, 83 Ill. App. 2d 218, 226 N.E. 2d 870.) The presumption of innocence and proof beyond a reasonable doubt are available to the individual prosecuted by State statute. Furthermore, the fact that a violation of the State statute results in a criminal prosecution entitles the defendant to a jury, whereas the quasi-criminal nature of an action or prosecution under the ordinance may mean that the defendant must demand and pay for the right of a trial by jury. Also, a person charged with violation of a municipal ordinance, is also subject to prosecution under the State statute and double jeopardy cannot be used in bar. (*Village of Maywood* v. *Houston*, 10 Ill. 2d 117, 120.)

In its opinion, the Appellate Court stated that since the penalty of the City ordinance is less than the State

statute, that equal protection of the laws is not violated. The court cited no authority for this proposition. It did recognize that the equal protection of the laws argument had merit by declaring that "the inequities of the situation should be properly directed to the Legislature." The "inequities" are precisely the means by which the equal protection of the laws is denied.

The case of *Haswell* v. *Powell,* 38 Ill. 2d 161, 164, involving the constitutional authority of the Secretary of State to revoke or suspend drivers' licenses stated the equal protection argument in this fashion: "There is also nothing to indicate that all drivers are not treated alike under like circumstances and conditions, which is all that the constitutional provision for equal protection of the law commands." Here, drivers are not treated the same under like circumstances. Drivers are entitled to be prosecuted under the State statute with all the attendant safeguards. Where a person is prosecuted by municipal ordinance rather than the State statute the sense of fair play is violated, and the individual is denied the equal protection of the laws. The practice of the municipalities should be halted. Action or prosecution by City ordinance of driving under the influence of intoxicating liquor cases violates the constitutional provisions relative to the equal protection of the laws and due process when the prosecution can and should be conducted under the State statute which prohibits such conduct.

The dismissal of the charge of driving under the influence of intoxicating liquor by the trial court was correct, and the judgment of the Appellate Court should be reversed.

Conclusion.

This case involves substantial federal questions.

There has been a substantial denial of the constitutional rights of the petitioner. Illinois had deprived him of his liberty without due process of law in violation of the Constitutions of the United States and of the State of Illinois. It has also denied him the equal protection of the laws.

In order that justice may be done, this court should take jurisdiction.

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

JOHN R. SNIVELY,
Counsel for Petitioner.

WILLIAM H. SNIVELY,
Of Counsel.

Appendix.

A.

Constitutions

Constitution of the United States

Articles in Addition to, and Amendment of, the Constitution.

Amendment XIV

Section 1. * * * nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Illinois

Adopted in Convention at Springfield, May 13, 1870. Ratified by the People, July 2, 1870. In force August 8, 1870.

Article II

Bill of Rights

Section 2. No person shall be deprived of life, liberty or property, without due process of law.

B.

Statutes

An Act to revise and codify the laws relating to cities, villages and incorporated towns and to repeal acts and parts of acts therein named. Approved May 29, 1961. L. 1961 p. 576.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1-1-1.) This code shall be known and be cited as the Illinois Municipal Code.

Streets and Public Ways

Division 80. General Powers Over Streets and Public Ways.

Section 11-80-1. Law Governing.) All provisions of this Code relating to the control of streets, alleys, sidewalks, and all other public ways are subject to the provisions of the Uniform Act Regulating Traffic on Highways, approved July 9, 1935, as heretofore and hereafter amended and the Illinois Highway Code, approved June 8, 1959, as heretofore and hereafter amended.

Ill. Rev. Stat. 1965, Chap. 24, Secs. 1-1-1, 11-80-1.

An Act in relation to the regulation of traffic. (Approved July 9, 1935. L. 1935 p. 1247.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Article II. Obedience to and Effect of Traffic Laws.

122. Section 25. Provisions of Act Uniform Through State. The provisions of this Act shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein and no local authority

shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities, may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act, but such regulations shall not be effective until signs giving notice thereof are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

(Amended by Act approved August 7, 1961.)

123. Section 26. Powers of Local Authorities. (a) The provisions of this Act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;

2. Regulating traffic by means of police officers or traffic control signals;

3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 50 of this Act;

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in Article XVI of this Act;

8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.

(b) No ordinance or regulation enacted under subdivisions (1), (4), (5), (6), (7) or (8) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

(Amended by Act approved April 27, 1965.)

Article V. Driving While Intoxicated, and Reckless Driving.

144. Section 47. Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs. (a) It is unlawful and punishable as provided in subdivision (c) of this section for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle within this State.

(b) Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his breath, blood, urine, saliva or other bodily substances is admissible, and the result of any such analysis shall give rise to the following presumptions:

1. If there was 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that such person was not under the influence of intoxicating liquor;

2. If there was in excess of 0.05 percent but less than 0.15 percent by weight of alcohol in the person's

blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether such person was under the influence of intoxicating liquor;

3. If there was 0.15 percent or more by weight of alcohol in the person's blood, it shall be presumed that such person was under the influence of intoxicating liquor;

4. The foregoing provisions of this paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than 2 days nor more than 1 year, or by fine of not less than $100 nor more than $1000 or by both, such fine and imprisonment. On a second or subsequent conviction for an offense committed within 5 years after the commission of the first offense he shall be punished by imprisonment for not less than 90 days nor more than 1 year, and in the discretion of the court, a fine of not more than $1000.

The Secretary of State shall revoke the chauffeur's or operator's license of any person convicted under this section.

(Amended by Act approved August 4, 1961.)

Article XIX. Effect of and Short Title of Act.

238. Section 141. Short Title. This Act may be cited as the Uniform Act Regulating Traffic on Highways.

Ill. Rev. Stat. 1965, Chap. 95½, Secs. 122, 123, 144, 238.

C.

Ordinance.

The Code of Ordinances of the City of Rockford, Illinois, revised 1955.

Chapter 29.

Traffic

Section 39-101. Driving under influence of alcohol or narcotics.

It shall be unlawful for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle.

Any person violating any of the provisions of this section shall be fined not less than one hundred dollars nor more than three hundred dollars for each offense. (Ord. of 10-29-51)

D.

Opinion of the Appellate Court of Illinois

Second Judicial District

December 30, 1968

Rehearing Denied February 7, 1969

104 Ill. App. 2d 161, 243 N.E. 2d 837

Mr. Justice Seidenfield delivered the opinion of the Court:

The City has appealed from judgments dismissing charges brought against the defendant under two ordinances of the City of Rockford. The defendant was issued an Illinois Uniform Traffic Ticket and Complaint charging him with the offense under local ordinance of driving while under the influence of intoxicating liquor. He was similarly charged with violation of the local ordinance which prohibited the operation of a motor vehicle in a careless manner. Pursuant to motion, the court below held that both ordinances were invalid as in conflict with the State Statutes regulating traffic, and dismissed the charges.

We are called upon to decide the validity of the ordinances,[1] in the light of the State Statutes.[2]

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[1] "Section 39-99. *Careless Driving.*

Any person who drives any vehicle so as to endanger the safety of his own personal property or the safety of another person's property by a high degree of negligence in the operation of the vehicle is guilty of careless driving. (Ordinance of 4-12-37, Section 1483F; Ordinance of 1-10-55)"

"Section 39-100. *Penalty for Violation of Section* 39-99.

Any person violating any of the provisions of Section 39-99 shall be fined not less than $10.00 nor more than $200.00 for each offense. (Ordinance of 1-10-55)

Sec. 39-101. *Driving under Influence of Alcohol or Narcotics.*

It shall be unlawful for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle.

Any person violating any of the provisions of this section shall be fined not less than $100.00 nor more than $300.00 for each offense. (Ordinance of 10-29-51)"

The City argues that police regulations of a municipality may differ from those of the State upon the same subject if they are not inconsistent; and that whereas here the general policy is the same as to both the ordinance and the State Statute, but the ordinance attaches a lesser penalty for its violation, there is no repugnancy. The defendant urges that the Uniform Act Regulating Traffic on Highways has pre-empted the field leaving the City without authority to enact ordinances relating to driving under the influence of intoxicating liquor or careless driving.

It is well settled that the powers of a municipality over its streets and highways are those delegated to it by the State; and that the State may assume complete control of

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[2] *Ill. Rev. Stats.* 1965, Chap. 24, Sec. 11-80-1.

"11-80-1. *Laws governing.* All provisions of this Code relating to the control of streets, alleys, sidewalks and all other public ways are subject to the provisions of the Uniform Act Regulating Traffic on Highways, approved July 9, 1935, as heretofore and hereafter amended and the Illinois Highway Code, approved June 8, 1959, as heretofore and hereafter amended."

Ill. Rev. Stats. 1965, Chap. 95½, Secs. 122, 123.

"122. §25. *Provisions of act uniform throughout state.* The provisions of this Act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act, but such regulations shall not be effective until signs giving notice thereof are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate. As amended by act approved Aug. 7, 1961. L. 1961, p. 2869.

123. §26. *Powers of local authorities.* (a) The provisions of this Act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

the regulation of streets and highways and may deprive the municipalities of any power or authority with respect thereto. *Ayres* v. *City of Chicago*, 239 Ill. 237, 245 (1909). The grant of authority to municipalities relating to the control of streets and of traffic thereon is expressly subject to the Uniform Act Regulating Traffic on Highways (*Ill. Rev. Stats.* 1965, Chap. 24, Sec. 11-80-1, Sec. 11-80-20). Whether the present Uniform Act Regulating Traffic has pre-empted the field of regulation as to driving while intoxicated and as to reckless driving so that no different regulation of these subjects is within the power of a municipality requires an interpretation of the Act with a view to its declared purposes and against the backdrop of prior legislation on the same subject.

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1. Regulating the standing or parking of vehicles;
2. Regulating traffic by means of police officers or traffic control signals;
3. Regulating or prohibiting processions or assemblages on the highways;
4. Designating particular highways as one way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 50 of this Act;
6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections;
7. Restricting the use of highways as authorized in Article XVI of this Act;
8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.

(b). No ordinance or regulation enacted under subdivisions (1), (4), (5), (6), (7) or (8) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

* * *"

The initial regulation of motor vehicles was by Act of 1907. The title of the 1907 law included the words "providing for * * * uniform rules regulating the use and speed thereof * * *". The Illinois Supreme Court in *Ayres* v. *City of Chicago* (supra) stated that with reference to the Act of 1907 (Page 245),

> "The legislature has by the Motor Vehicle act taken the subject of the regulation of the speed and operation of automobiles out of the hands of local authorities and passed the Motor Vehicle law as a general, uniform regulation, applicable alike to all municipalities of the State. The effect of this law manifestly is to abrogate all municipal ordinances designed to regulate the use of motor vehicles passed prior to the time such law went into force and to deprive such municipalities of the power to pass such regulating ordinances in the future. The necessity for such uniform law was a matter for legislative determination, with which the courts have nothing to do. Clearly, the purpose of the legislature was to pass a new and complete law designed to take the place of all municipal ordinances or rules regulating the equipment and operation of motor vehicles."

In *Ayres* the Court had before it Section 13 of the Act of 1907 which in substance provided that an owner would not be required to obtain any other license or permit to use the vehicle except that issued by the Secretary of State, nor be required to comply with other provisions or conditions as to the use of said motor vehicles except as provided in the Act. The majority of the Court, however, held that a "Wheel Tax" ordinance passed by the City of Chicago was valid as a proper exercise of the taxing power of the City and that it was not in conflict with the Uniform Act because it did not purport to regulate the

manner of operating the vehicle or equipping it. By Act of 1911 the following provision was added to the 1907 Act:

> "That nothing in this Act contained shall be construed as affecting (a) the power of municipal corporations to make and enforce ordinances, rules and regulations affecting motor trucks and motor-driven commercial vehicles and motor vehicles which are used within their limits for public hire, or for making and enforcing reasonable traffic and other regulations except as to rates of speed not inconsistent with the provisions hereof."

In *The People* v. *Sargent*, 254 Ill. 514, 517 (1912), the Court stated:

> "A careful reading of the act of 1911 will show that the legislative intent is the same as expressed above in respect to the act of 1907. The manifest purpose of the legislature was to bring the whole subject of regulating the use of motor vehicles under the control of the State."

However, in *City of Chicago* v. *Shaw Livery Co.*, 258 Ill. 409, 416 (1913), the Court pointed out that the only question presented in the *Sargent* case was whether the Act was constitutional, and a decision of that question did not involve the question of the power of municipalities to make and enforce such reasonable regulations relating to motor vehicles as are not inconsistent with the regulations contained in said Act. The Court then held that the effect of the added proviso of the Act of 1911 qualified the general statements in both the *Ayres* case and the *Sargent* case, and it upheld the ordinance of the City of Chicago which prohibited the use of any motor vehicle in such manner as to permit the escape of any noxious smoke, etc. as not in conflict with the Motor Vehicle Act of 1911.

In *Johnson* v. *Pendergast,* 308 Ill. 255, 262 (1923), the Supreme Court inferentially recognized that an ordinance of the City of Rockford providing that drivers in starting to turn from a standstill should give a signal in a certain way was to be given effect even though the 1911 Act covered that particular subject matter. The same result was reached directly in *Pettit* v. *Weil-McLain Co.,* 252 Ill. App. 423, 426 (1929), involving a similar ordinance of the City of Chicago.

The same proviso referred to above as to the co-ordinate authority of the State and of municipalities remained in the various Motor Vehicle Acts passed subsequent to the 1911 Act, until the Act of 1935 was passed. In a case very similar to the one before us on the facts, the *Village of Winnetka* v. *Sinnett,* 272 Ill. App. 143, 146-48 (1933), the court upheld a drunken driving ordinance of the Village of Winnetka holding that the Motor Vehicle Act itself clearly indicated the intention of the General Assembly to leave the power of municipalities to make traffic regulations in full force except as to speed, and that the fact that the ordinance prohibited an act already prohibited by the Statute providing a less penalty for violation of its terms did not affect the validity of the ordinance where the general policy under both enactments was the same.

A comprehensive revision of the Motor Vehicle Laws was enacted in 1935. The provisions dealing with the co-ordinate authority of municipalities were contained in Sections 122 and 123 of that Act. The particular provision of Section 122 has remained unchanged in the Act before us and the provision as to additional laws provided in Section 123 has been altered but in a manner in which

we do not deem material to the issue before us. (Chap. 95½, Secs. 122, 123, *Ill. Rev. Stats.* 1965, supra). It is basically to the effect that the provisions of the Act shall be applicable and uniform throughout the State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with its provisions unless expressly authorized in the Act. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of the Act. Section 123 provides in substance that the provisions of the Act shall not be deemed to prevent local authorities from regulating certain enumerated areas under their jurisdiction.

While the Uniform Act Regulating Traffic has considerably altered the language found in the previous act as to co-ordinate authority of the State and municipalities, we do not perceive that it has accomplished a basic change in legislative intention, nor is it the expression of an intention by the State to pre-empt the field to the exclusion of the municipality.

Section 122 distinguishes ordinances, rules and regulations *similar* to provisions of the Act from *additional* traffic regulations and provides that neither shall be in conflict with the Act. Thus it appears that if the State had meant to pre-empt the field, the words "in conflict" in the first sentence of Section 122 would be superfluous as a municipality would be without power to pass any law in the area. Since the words must be given meaning, the logical conclusion is that municipalities are empowered to pass laws, as long as they are not in conflict with the State law, and therefore the State has not pre-empted the field.

Although this court did not deal directly with the preemption question in *City of Highland Park* v. *Curtis*, 83 Ill. App. 2d 218 (1967), it assumed the law to be settled that municipalities may exercise police power concurrently with the State, and that those regulations may differ from those of the State on the same subject, if not inconsistent therewith. (Page 227) *Curtis* involved a municipal ordinance on drunken driving.

The same assumption is found in *The People* v. *Reiner*, 6 Ill. 2d 337, 344 (1955), another case which involved a municipal drunken driving ordinance. In that case the Supreme Court decided a case on a different issue, but it alluded to Section 32 of the Drivers License Act which provided in part that "whenever any person is convicted of any offense under this Act or the Uniform Act Regulating Traffic on highways or *similar offenses under a municipal ordinance* * * * (emphasis added)".

It would appear that the State law itself then recognizes that a municipal ordinance may provide for a violation for drunken driving. (Section 32 of the Drivers License Act is now Chapter 95½, Section 6-204-(2), *Ill. Rev. Stats.* 1965.)

With respect to the drunken driving ordinance of the City of Rockford before us, the defendant also argues that it is in direct conflict with the State law. He contends that the conflict is created by the fact that the City ordinance does not contain any of the provisions relating to what constitutes driving under the influence of intoxicating liquor in regard to percentage of blood alcohol, nor does it tell how tests are to be administered, nor the result of the tests in regard to the presumption of intoxication. He also contends that a conflict is created

because he may be convicted by only a preponderance of the evidence under the Rockford ordinance while he is entitled to the presumption of innocence and the proof beyond a reasonable doubt under the State law; that he may be charged under both laws and that therefore the burden upon him is greater and he is denied equal protection of the laws under the constitution. However, we believe that the answer to these contentions is that the City ordinance is less restrictive in its penalty than the State law, and that the burden of proof cannot be considered as a part of a penalty. The policy of both laws is the same. In *City of Highland Park* v. *Curtis,* supra, the history and the public policy of quasi criminal actions for violation of municipal ordinances are thoroughly discussed. If defendant's contentions were upheld it would mean that practically all quasi criminal actions would be in conflict with State laws, although nowhere has the Legislature clearly expressed such an intention. We believe that the arguments of the defendant as to the inequities of the situation should be properly directed to the Legislature.

Much of what we have said with reference to the drunken driving ordinance would also be applicable to the careless driving ordinance. However, here the defendant has made the additional contention that the definition of the offense of "careless driving" is vague, indefinite and uncertain. The ordinance provides for violation where a "high degree of negligence" is involved, while the State Statute (Chap. 95½, Sec. 145, *Ill. Rev. Stats.* 1965) provides for a violation where a "willful or wanton disregard for safety" is involved. The meaning of the term "willful and wanton" has evolved from a strict to a quite liberal definition in the decisions over the years. See *Schneider-*

man v. *Interstate Tr. Lines,* 394 Ill. 569, 583 (1946) and *Spivack* v. *Hara,* 69 Ill. App. 2d 22, 26-27 (1966). However, it designates a standard of conduct which can be defined. A "high degree of negligence" is not such a term of art and we have found no decisions defining its meaning. Nor can negligence and willful and wanton misconduct be considered synonymous. *Bartolucci* v. *Falleti,* 382 Ill. 168, 176 (1943); *C., R.I. & P. Ry. Co.* v. *Hamler,* 215 Ill. 525, 540 (1905). We find the Rockford ordinance as to careless driving void for vagueness and uncertainty. *Lombardo Wine Co.* v. *Taylor,* 407 Ill. 454, 459, 460 (1950); *Ill. Liquor Com.* v. *Chicago Liquor Store,* 403 Ill. 578, 582, 583 (1949). Ordinances are construed under the same rules as statutes. *Vil. of Park Forest* v. *Wojciechowski,* 29 Ill. 2d 435, 437 (1963).

We, therefore, reverse and remand the cause on the charge of driving while under the influence of intoxicating liquors, but affirm the trial court's dismissal of the charge of careless driving.

Reversed and remanded in part, affirmed in part.

ABRAHAMSON, J. and DAVIS, J. concur.

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 592

JOHN R. FLOYD,

Petitioner,

vs.

CITY OF ROCKFORD, ILLINOIS,
a Municipal Corporation,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

PETITION FOR REHEARING

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PETITION FOR REHEARING

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes John R. Floyd, the petitioner herein, and presents his petition for rehearing in the above entitled cause, upon the grounds, and for the reasons hereinafter set forth.

Question Not Previously Presented.

1. Whether a municipality has the power to enact or enforce an ordinance relating to driving while under the influence of intoxicating liquor.

Reasons For Granting Rehearing And Writ.

1. A municipality does not have the power to enact or enforce an ordinance relating to driving while under the influence of intoxicating liquor.

The provisions of the Uniform Act Regulating Traffic on Highways provide that the same shall be applicable and uniform throughout this State and all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of the Act. (Ill. Rev. Stat. 1965, Chap. 95½, Par. 122.) Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of the Act, but such regulations shall not be effective until signs giving notice thereof are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

The provisions of the Act also provide that the same shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;

2. Regulating traffic by means of police officers or traffic control signals;

3. Regulating or prohibiting processions of assemblages on the highways:

4. Designating particular highways as one way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 50 of this Act;

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in Article XVI of this Act;

8. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.

No ordinance or regulation enacted under subdivisions (1), (4), (5), (6), (7) or (8) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

Ill. Rev. Stat. 1965, Chap. 95½, Par. 123.

Clearly, the Illinois legislature did not intend for a municipality to regulate driving under the influence of intoxicating liquor by local ordinance or such power would

have been stated by the legislature. The dismissal of the charge by the trial court was correct and the judgment of the court below should be vacated.

There was a denial of due process of law.

Conclusion.

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, the petitioner prays that this Court grant a rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

JOHN R. SNIVELY,
Counsel for Petitioner.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

JOHN R. SNIVELY,
Counsel for Petitioner.